IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 503 OF 2007

M/S. TRANSPORT CORPORATION OF INDIA LIMITED ... Petitioner

Versus

M/S. NARCINVA DAMODAR NAIK REPRESENTED BY TWO PARTNERS ... Respondent

Mr. Pravin Naik, Advocate for the Petitioner.

Coram:- N. A. BRITTO, J.

Date:- 30th November, 2007

ORAL ORDER:

Heard Shri Naik, the learned Counsel on behalf of the Petitioner.

2. The Petitioner is defendant in Regular Civil Suit No. 75/03/I. The plaintiff is a registered firm and the suit was filed by its two partners. The plaint was signed by them and was verified by one of them. The plaintiff gave power of attorney to one Vinayak B. Pai Angle to depose in the suit. The affidavit in evidence of the said power of attorney along with the power of attorney was filed before the trial Court on 19/11/2004 and then the case was adjourned sine die as stated by learned Counsel on behalf of the petitioner and was taken up for hearing on 15/01/2007. The petitioner filed an application dated 25/06/2007 objecting the filing of affidavit in evidence by the said power of attorney and this the petitioner did, based on the judgment of the Hon'ble Supreme Court reported in AIR 2005 SC 439. That application came to be rejected by the order impugned in this petition.

3. Counsel on behalf of the petitioner submits that he has not seen the power of attorney given by the plaintiff-firm. This is rather unfortunate,

even if a copy of the power of attorney was not furnished to him. The power of attorney was in the file for over 2 years and nothing prevented the defendant to inspect the same. Since the plaint was signed by both the partners, it could be presumed that the power of attorney was also given by the firm, acting through the two partners who had signed the plaint.

4. The contention of the petitioner is that the power of attorney cannot depose in place of the principal.

5. There can't be such a universal proposition. A power of attorney can appear, plead and act on behalf of the principal and this is in view of the principle "Qui facit per alium, facit per se" (he who acts through another acts himself) and the provisions of Order III, Rules 1 & 2, C.P.C. He can depose facts which are to his knowledge and if he deposes facts which are to the knowledge of the principal, those facts may not be accepted and in that the principal-party may be taking a risk, and, that is what the Apex Court meant in Janki V. Bhojwani (supra) when it stated that a power of attorney cannot be allowed to appear as a witness on behalf of a plaintiff in the capacity of the plaintiff. At this stage it is impermissible to lay down any such broad proposition that the plaintiff cannot lead evidence in support of their claim by examining their attorney.

6. I find there is no merit in this petition, and therefore the same is dismissed in limine.

N. A. BRITTO, J.

NH